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16 | *Counsel for Dennis Dilbeck*

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

19 NETFLIX, INC. a Delaware corporation,
20 Plaintiff,

No. C 06 2361 WHA JCS
Judge William Alsup

21 v.
22 BLOCKBUSTER INC., a Delaware corporation,
23 and DOES 1-50,
24 Defendants.

No. C 07-00643 PVT
Magistrate Judge Patricia V. Trumbull

**ADMINISTRATIVE MOTION TO
CONSIDER WHETHER CASES
SHOULD BE RELATED UNDER
CIVIL L.R. 3-12**

24 DENNIS DILBECK, an individual, on his own
25 behalf and on behalf of all others similarly situated,

26 v.
27 NETFLIX, INC. a Delaware corporation,
28 Defendant.

**ADMINISTRATIVE MOTION TO CONSIDER
WHETHER CASES SHOULD BE RELATED UNDER CIVIL L.R. 3-12**

Dennis Dilbeck, Plaintiff in case No. C 07-00643 PVT, *Dilbeck v. Netflix, Inc.*, moves the Court pursuant to Northern District of California Civil L.R. 3-12 and 7-11 to consider whether the following cases should be related:

1. *Netflix, Inc. v. Blockbuster Inc.*, No. C 06 2361 WHA JCS (N.D. Cal. filed Apr. 4, 2006); and
 2. *Dilbeck v. Netflix, Inc.*, No. C 07-00643 PVT (N.D. Cal. filed January 31, 2007).

Local Rule 3-12 provides that an action is related to another when they “concern substantially the same parties, property, transaction or event; and [i]t appears likely that there will be an unduly burdensome duplication of labor and expense or conflicting results if the cases are conducted before different Judges.” As Dilbeck's previous motion to intervene explained at length, there is a substantial overlap in the facts at issue in Blockbuster's *Walker Process* antitrust counterclaim and Dilbeck's *Walker Process* antitrust complaint. Both claims allege that Netflix obtained U.S. Patents Nos. 6,584,450 and 7,024,381 through fraud. Blockbuster's counterclaim alleges lost profits and lost goodwill arising Netflix's *Walker Process* violation, which arise from Netflix's use of its Patents to delay Blockbuster's legitimate competition with Netflix.

(Blockbuster Countercl. ¶¶ 108, 117.) Dilbeck's complaint concerns not only Blockbuster's delay in competing with Netflix, but the Patent's effect of restraining *all competitors* to Netflix, and the monopolistic overcharges Netflix thereby secured. Consequently, there are grounds for the Court to consider whether cases Nos. C 06 2361 WHA JCS and C 07-00643 PVT are related under Civil L.R. 3-12(b).

DATED: February 7, 2007

By: /s/Alan Himmelfarb

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CERTIFICATE OF SERVICE

Pursuant to 28 U.S.C. §1746, I hereby certify that on February 7, 2007, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses on the attached attorney list for case No. C 06 2361 WHA JCS, and that this filing will notify the only other party in case No. C 07-00643 PVT.

DATED: February 7, 2007

By: /s/Alan Himmelfarb

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NETFLIX, INC. a Delaware corporation,
Plaintiff,

No. C 06 2361 WHA JCS
Judge William Alsup

BLOCKBUSTER INC., a Delaware corporation,
and DOES 1-50,
Defendants.

No. C 07-00643 PVT
Magistrate Judge Patricia V. Trumbull

**ADMINISTRATIVE MOTION TO
CONSIDER WHETHER CASES
SHOULD BE RELATED UNDER
CIVIL L.R. 3-12**

DENNIS DILBECK, an individual, on his own behalf and on behalf of all others similarly situated,

V.

NETFLIX, INC. a Delaware corporation,
Defendant.

**DECLARATION OF ETHAN PRESTON
IN SUPPORT OF DILBECK'S ADMINISTRATIVE MOTION**

Pursuant to 28 U.S.C. § 1746, I hereby declare as follows:

1. Pursuant to Civil. L.R. 7-11, I consulted with counsel for Blockbuster Inc. and Netflix, Inc. in case No. C 06 2361 WHA JCS as to whether they would stipulate to the Dilbeck's Administrative Motion to Consider Whether Cases Should Be Related Under Civil L.R. 3-12.
2. Netflix's counsel indicated Netflix would stipulate to the Administrative Motion; Blockbuster's counsel indicated Blockbuster would not stipulate to the Administrative Motion.
3. I declare under penalty of perjury, that the foregoing is true and correct.

Pursuant to Section X of the Northern District of California's General Order No. 45 on electronic case filing and 28 U.S.C. § 1746, in lieu of Ethan Preston's signature on this declaration, Alan Himmelfarb attests that Ethan Preston is the signatory of this declaration, and that Ethan Preston concurred to this declaration on February 7, 2007.

DATE: February 7, 2007

/s/Alan Himmelfarb
ALAN HIMMELFARB